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## **Criminal Justice Committee**

# **Pre-budget scrutiny: priorities in 2022-23 for the Scottish Government's budget in the justice sector**



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# Contents

<b>Introduction</b>	<b>1</b>
<b>Background to the justice sector budget</b>	<b>2</b>
<b>Our priorities</b>	<b>4</b>
The impact of COVID on budgets	4
The budget provided for the Crown Office and Procurator Fiscal Service	7
Budgets for prisons, prison reform and secure care	10
Budgets for police and fire and rescue	13
Policing	13
Fire and rescue services	17
The support for victims of crime	18
Budgets for legal aid	18
Financing the policies and legislation in the Scottish Government's Programme for Government	21
<b>Conclusions and recommendations</b>	<b>24</b>
The justice sector budget in 2022-23: our view on what is required	24
Recovering from the pandemic	26
Our court system	26
Prisons and prison reform	27
Police and fire and rescue services	28
Community justice	29
Support for victims, fatal accident inquiries and deaths in custody	30
The legal aid system	31
Drug deaths and tackling drugs misuse and the criminal justice system	32
Funding for the Programme for Government	32
<b>Annex</b>	<b>34</b>

# Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Veterans, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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# Introduction

1. In the previous session, the Scottish Parliament agreed a new process for budget scrutiny based on the recommendations of the [Budget Process Review Group](#).
  2. Part of this process is for each committee to conduct **pre-budget scrutiny** in advance of the publication by the Scottish Government of its spending proposals for the next financial year. Each committee takes evidence in the relevant spending area (such as justice) and provides a short report to the relevant Cabinet Secretary, setting out its views on spending priorities.
  3. This year, the Criminal Justice Committee issued a [call for views](#) on 16 September 2021. The Committee wanted to hear views from across all the different parts of the criminal justice sector. This includes our prisons and courts, policing and fire and rescue services, criminal justice social work, and the support of victims.
  4. In addition to the [written evidence received](#) (see **Annex**), the Committee agreed to take more detailed oral evidence from the following:
    - 6 October – Police Scotland and the Scottish Police Authority (SPA), followed by the Scottish Legal Aid Board;
    - 3 November – Crown Office and Procurator Fiscal Service (COPFS) followed by the Scottish Prisons Service (SPS); and
    - 10 November – the Cabinet Secretary for Justice and Veterans.
5. **The Committee thanks all of those who have taken the time to respond to our call for views.**

# Background to the justice sector budget

6. The justice portfolio has responsibility for the civil, criminal and administrative justice systems which include Scotland's prisons, courts, tribunals, the legal aid system and criminal justice social work services. It supports the police and fire and rescue services.
7. The budget proposed for the justice sector by the Scottish Government in the current financial year (2021/22) is set out in the [Budget](#) as published. A total of £3,027.7 million was proposed for 2021/22 for justice. The totals for the two preceding financial years were £2,849.5 million and £2,719.3 million respectively. <sup>1</sup>
8. The current year's figure breaks down into £2,723.7 million in resource spending, £137.5 million in non-cash and £166.5 million in capital spend. <sup>2</sup>
9. The high-level (level 2) breakdown of the current financial year's budget for justice was as follows (Table 1).

**Table 1: The Scottish Government's 2020/21 budget for justice as proposed (level 2 figures)**

A table provided by the Scottish Government showing a breakdown of the justice sector budget figures in 2020 to 2021.

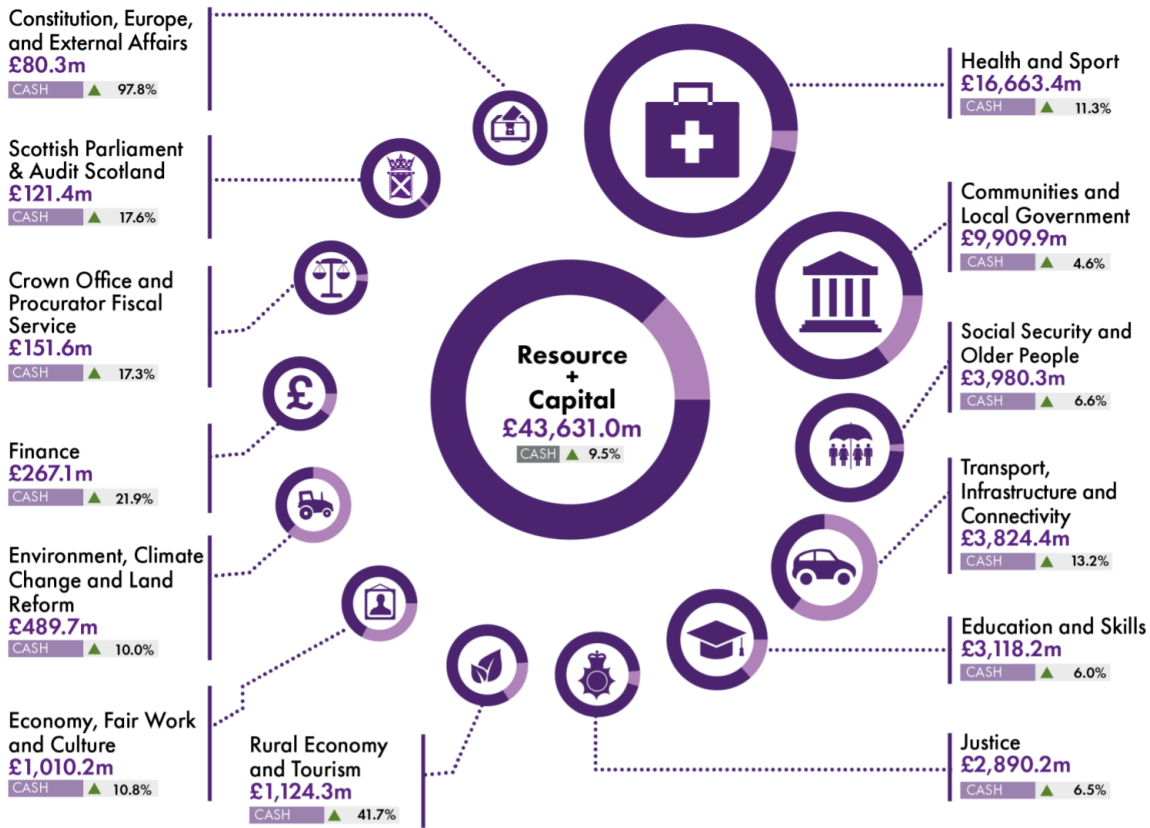
	2019-20 Budget£m	2020-21 Budget£m	2021-22 Budget£m
Community Justice	37.1	44.0	46.3
Judiciary	34.3	36.3	37.3
Criminal Injuries Compensation	15.5	15.5	15.6
Legal Aid	137.5	137.5	138.0
Safer and Stronger Communities	6.4	11.6	12.6
Police Central Government	66.8	57.0	62.3
Police and Fire Pensions	350.6	350.6	350.6
Scottish Prison Service	393.7	442.2	460.2
Miscellaneous	53.5	58.6	59.5
Scottish Police Authority	1,180.1	1,240.3	1,300.8
Scottish Fire and Rescue Service	327.2	333.3	343.2
Scottish Courts and Tribunals Service	116.6	122.6	129.3
Allocation of COVID Consequentials	-	-	72.0
<b>Total Justice</b>	<b>2,719.3</b>	<b>2,849.5</b>	<b>3,027.7</b>

Source: Scottish Government

10. Relative to some of the other portfolios, expenditure on justice matters is one of the smaller areas of spend. Health and sport for example was originally allocated £16,663.4 million in 2021-22, communities and local government £9,909.9 million, and education and skills £3,118.2 million; see Figure 1 below.

**Figure 1: Fiscal Resource and Capital, including financial transactions, combined by portfolio, 2021-22.**

A diagram that shows the relative budget allocations for different parts of the budget. Justice receives nearly £3 billion out of a total of just over £43.6 billion.



Source: [Scottish Budget 2021-22](#)



## Our priorities

11. This year, the Committee indicated that it wanted to hear views from all parts of the criminal justice sector. That is our prisons and courts, policing and fire and rescue services, criminal justice social work, the support of victims, provision of legal aid etc. In particular, however, we said we were interested in views on:
  - The impact of COVID on budgets;
  - The budget provided for the Crown Office and Procurator Fiscal Service (COPFS);
  - Budgets for prisons, prison reform and secure care;
  - Budgets for police and fire and rescue;
  - The support for victims of crime;
  - Budgets for legal aid; and
  - Financing the policies and legislation in the Scottish Government's Programme for Government.
12. In the remainder of this report, we set out an overview of the views we received on each of the above. Copies of the individual [written submissions of evidence](#) are available online.

## The impact of COVID on budgets

13. The specific questions posed by the Committee in its call for views in this area were:
  - Whether the Scottish Government is providing enough budget for the criminal justice sector to recover from COVID-19?
  - What the cost will be of making permanent some of the temporary changes brought in because of the pandemic (if these are to become permanent)?
  - Whether organisations in the criminal justice sector have enough budget and staff to be able to cope with a return to pre-pandemic levels of working (e.g. expected growth in the number of court trials)?
  - Whether there have been any savings and efficiencies because of the different way of working during the pandemic, what these savings have been used for elsewhere, and could they be kept once the pandemic is over?
  - Where are the opportunities for future reform and savings?
14. The following is a sample of the comments the Committee received on these questions from a number of organisations and individuals.
15. APEX Scotland was critical of the transparency of COVID budget allocations across the justice sector. It said it is "impossible for us to know whether the Government is

- providing enough budget because almost everything is given to Local Authorities for disbursement so we would rarely know how much is actually being allocated or, more tellingly, where it is going when it has been". They added that "there has been very little evidence of third sector engagement in how these finances should be used and to date very little evidence of funding finding its way to third sector providers from the public sector".<sup>3</sup>
16. Commenting specifically on courts and JP courts in particular, the Scottish Justices Association (SJA) said that "further action is required to tackle the backlog of cases", in particular the recruitment of Sheriffdom Legal Advisors and their staff. The SJA noted that, at present, 50% of Sheriffdom Legal Advisor posts are vacant (three out of six) and a number of Legal Advisor posts are vacant or filled by locums. The SJA said that a full complement of Legal Advisors is necessary for the JP Courts to perform effectively in reducing the backlog.<sup>4</sup>
17. In relation to the High Courts, the Faculty of Advocates said that with the increase to twenty trials per day, the SCTS programme for recovery in High Court trials "is now at the very limit of what the current available personnel (prosecution and defence) can service". They noted that it represents almost double the throughput of trials. They said, "although further expansion would be welcome the reality is that even if further expansion was financed, the lack of enough of the highly trained court practitioners required would be a limiting factor".<sup>5</sup>
18. In its submission, the Scottish Courts and Tribunals Service (SCTS) said that "steps have been taken to ensure that increased investment at one stage in the system is matched elsewhere, to avoid bottlenecks –recognising that the system must move collectively." SCTS believed that the increased capacity was now "beginning to deliver benefits" and that case backlog levels in the High Court and summary business "may now have peaked, with the most recent data indicating modest reductions in the backlogs that have arisen".<sup>6</sup>
19. As such, SCTS said "Core budgets, including an additional £10.2m for cost pressures, inflation and pay, will need to be protected for SCTS (and other criminal justice partners), so that the system can focus on delivering the recovery programme and the innovative approaches developed during the pandemic, that are capable of delivering longer-term benefits."<sup>7</sup>
20. SCTS cited statistics for August 2021 when the level of High Court cases concluded was 13% higher than pre-COVID, Sheriff Solemn was 5% higher, and Sheriff Summary only 2% below pre-pandemic averages. In its view, "while the measures introduced are welcome the fact remains that the pandemic has created significant case backlogs at all levels of the criminal justice system, which will require a multi-year system wide recovery programme to address."<sup>8</sup>
21. The court backlog already present before COVID and now exacerbated by it will have an impact on other sectors. For example, HM Inspectorate of Prisons in Scotland (HMIPS) said that whilst it welcomed the additional funding for the justice system made available by the Scottish Government to assist with COVID pressures, such as additional resources to deal with the backlog in court activity, "the reality is that dealing with that backlog will only intensify the pressures that are inherent within the justice system and particularly within the prison system".<sup>9</sup> They

concluded that unless alternative approaches to remand and custodial sentences are adopted, encouraged by greater investment at scale in community justice services and more willingness to reduce risk through electronic tagging, then tackling the backlog in court cases will force a further rise in the prison population.

22. The work of groups such as criminal justice social workers was also affected by the pandemic and now also by the efforts to reduce the backlog in our courts. Social Work Scotland told the Committee that whilst it welcomed the £15.3 million in additional funds that have been provided for COVID, the money allocated is only for one year (when recovery will take a number of years) and that local authorities were only informed on 30 March of their respective allocation (leaving little time for planning). They added that because they have no ability to roll-forward any under-spend from 2021/22 into 2022/23 due to Scottish Government rules, many local areas have been forced to recruit to short-term contracts. In their view, "this makes recovery more precarious and limits [their] ability to deliver renewal and transformation." <sup>10</sup>
23. The Committee also asked about the costs of making permanent some of the temporary changes that have been brought in by COVID and also whether the pandemic has led to any cost savings or efficiencies.
24. HMIPS said that the increased use of virtual courts was to be welcomed and that they are convinced that the benefits far outweigh the costs so that the case for these developments continuing beyond the pandemic is overwhelming. Similarly, the use of mobile phones and virtual visit technology which the Scottish Prison Service brought in to support family contact when physical visits had to stop due to COVID restrictions has, in its view, fully justified the cost involved in continuing these services. HMIPS said it "would be deeply concerned if these facilities were stopped or unreasonable charges on prisoners or their families imposed for their use". <sup>11</sup> They wanted to see consideration of extension of these powers to include investment in further technology to reduce the administrative burden, increase safety and provide in cell learning and rehabilitative activity.
25. The Faculty of Advocates did not dispute that there may be some financial savings from digital justice and virtual courts, but warned that "any savings gained should not come at the cost of justice". It said that the High Court witness box is, for good reason, a grave and solemn location. In its view, "discarding that source of discipline for witnesses for the sake of their convenience may make more sense in the lower courts but in the High Court the importance of the subject matter renders the giving of evidence in person a priority." <sup>12</sup>
26. Some of the evidence we received highlighted support for the retention of some of the temporary measures that had been brought in as a result of COVID. For example, the Inspectorate of Prosecution's 2020 joint report with the HMICS concluded that "the emergency provisions had proved particularly beneficial during the initial lockdown period and would continue to have value during the recovery period (and any subsequent lockdowns)." <sup>13</sup> Temporary measures such as the use of electronic signatures and electronic transmission of documents, and the revised Lord Advocate's Guidelines on liberation by the police during COVID were highlighted. Other, more mixed and nuanced views were cited on remote, electronic appearance of parties at court and the type of court proceedings, such as virtual custody courts.

27. Similarly, SCTS was fairly positive about the continuation of some of the recent temporary measures in our courts, stating, "The SCTS Board is keen to ensure that a range of innovations which have the potential to benefit the criminal justice system are maintained, explored and fully exploited, to provide a positive legacy from the experience of the past 18 months." <sup>14</sup> For example, greater use of virtual custody cases, continuation of virtual procedural hearings, where appropriate, extending the use of evidence on commission, maintaining the new approach to remote jury balloting and exploring further appropriate use of virtual summary trials.
28. SCTS did warn the Committee that its capital budget had been "severely stretched" because of the pandemic and, as a result, funding has been diverted from estates backlog maintenance to digital services. In its view, while this was a sensible tactical short term solution, "it is not sustainable as it risks future building failure and additional costs should maintenance issues be left to escalate". <sup>15</sup> As a minimum, it said, an additional annual capital investment of some £3m will be required to safeguard its estate.
29. In the longer term, the Criminal Justice Voluntary Sector Forum encouraged the Committee to advocate for a more preventative approach to justice in Scotland and to highlight the need for cross-divisional investment in projects, services and capital investments that join up activities and deliver positive outcomes across multiple ministerial portfolios. They said, "there is an opportunity to use the budget to embed the positive changes that have occurred during the pandemic, to work towards addressing pre-existing systematic failures and to drive transformational change that delivers better outcomes for individuals and families who are in contact with the justice system." <sup>16</sup>
30. In his evidence to the Committee on the impact of COVID-19 on the justice sector, the Cabinet Secretary for Justice and Veterans said "COVID-19 has not gone away" and highlighted the £50 million invested this year for the recovery, renew and transform programme. In his view, "we must ensure that we do not simply try to recover to the place before the pandemic started", stressing the opportunity to doing things better or differently. <sup>17</sup>
31. **Our conclusions on the issues set out above are set out in the [final section of this report](#).**

## **The budget provided for the Crown Office and Procurator Fiscal Service**

32. The specific questions posed by the Committee in its call for views in this area were:
  - Whether the Scottish Government is providing enough budget for the work expected of the COPFS?
  - What is the expected impact of the budget of the COPFS from the recent cases of malicious prosecution?
33. The PCS branch at the COPFS said it welcomed the increased funding and that the

COPFS had undertaken to recruit new staff in significant numbers, but said "this will take time to be effective."<sup>18</sup> The union warned though that the increased workload from efforts to reduce the backlog has had a detrimental effect on their members' health and well-being and has put them under strain.

34. Similarly, the FDA union in the COPFS welcomed the additional funding provided to the COPFS for additional staff, but reported that the COPFS was continuing to have problems in finding suitable candidates for vacant positions and was having to re-run a number of selection boards. The FDA indicated that the COPFS had a vacancy rate of nearly 13%.
35. The union also reported concerns regarding the length of time that a new recruit was allowed to train on the job and develop experience before dealing with criminal summary business and then again before moving on to deal with more serious and complex Sheriff and Jury cases. The FDA cited the High Court Unit where in recent months, three unaccredited deputes, again with extremely limited solemn experience, had been transferred into the Unit. The union believed this was unfair on the individuals involved and came with "obvious risks to the well-being of individual members and reputational risks both for the staff and to COPFS; the consequences can be devastating to individuals, their confidence and their career development."<sup>19</sup>
36. In her evidence to the Committee, the Lord Advocate commented on the point made above by the FDA union, stating that—
 

” It is in the public interest that we have well-trained lawyers, and that cases are well prepared and well presented in court. There is no doubt that the recruitment drive brings an enormous pressure in that regard, and it has to be through the dedication of those who have committed their professional life to the service that we bring through young people and inspire and promote them to view the work in the same way that all those dedicated servants in COPFS currently do. At a high level, I see training and education as critical to the improvement of the service.”<sup>20</sup>
37. The Scottish Justices Association said that a number of JP Courts had reported difficulties with having COPFS staff being available, in particular when required at short notice to be available due to sickness absence. In its view, "there is therefore insufficient levels of staff to provide cover."<sup>21</sup>
38. In its submission, the Inspectorate of Prosecution at the COPFS said the increase in 2021/ to the COPFS's budget (resource allocation rose by £21.9m to £146.8m in 2021-22, while capital funding rose by £0.5m to £4.8m) was "welcome, and takes account of the significant additional demands arising from its usual business as well as its response to the pandemic." She stated that the additional demands have arisen from, for example, the increase in complex cases and investigations which require the gathering and analysis of increased volumes of electronic data. In her view, the pandemic has further increased the workload of COPFS and "will continue to have significant consequences for its work for some time to come, not least in respect of the backlog of cases which it is anticipated will take years to clear."<sup>22</sup>
39. In their evidence to the Committee, the Lord Advocate and Crown Agent provided up-to-date figures on the backlog—

” Before the pandemic, there were 13,400 or thereby sheriff court trials outstanding. The number at the moment is over 32,400. In the justice of the peace courts, there were just over 3,200 trials outstanding, and the number is now sitting at 7,890 or thereby. In the sheriff and jury courts—the Lord Advocate said that they are a particular pinch point, and I agree—there were about 1,330 trials outstanding pre-pandemic and there are currently in excess of 3,500. <sup>23</sup>

40. The Lord Advocate further described the court backlog as "an enormous problem" and further highlighted the "the extraordinary numbers of sexual violence cases that are waiting for trial and the impact that that has on the most vulnerable members of our community and of society, who require the protection of our court." <sup>24</sup>

41. On a separate matter, the Committee also received a number of comments from organisations and individuals on the expected impact of the budget of the COPFS from the recent cases of malicious prosecution. For example, Fiona McKinnon, a solicitor <sup>25</sup>, said that "This has soiled the reputation of COPFS and is an absolute disgrace. The payments far exceed the sums reinvested in legal aid." <sup>26</sup>

42. Similarly, Tina McGreevy of McGreevy & Co., Solicitors in Glasgow said "The vast amounts of money wasted as a result of this case would have gone some way to plugging the holes which are appearing all over the criminal justice system." She added "that the [Scottish] Government can find millions of pounds to make reparation for this extraordinary and outrageous prosecution, but cannot properly fund the criminal defence bar, speaks for itself." <sup>27</sup>

43. In relation to the impact of the malicious prosecutions on staff in the COPFS, the PCS branch said that it "regrets the adverse publicity that COPFS received in the media following a recent number of malicious prosecutions" but that the prosecutions have "damaged morale amongst COPFS staff" and that "there is concern that this will have an effect on the way which staff perform in their roles and concern also over blame which may be apportioned following any inquiries which may be necessary to investigate the causes of those malicious prosecutions". <sup>28</sup>

44. In her submission, the Inspector of Prosecutions at COPFS said—

” The Scottish Government has provided assurance that the settlement of the claims will not affect the operational effectiveness of COPFS as they will not require to be met from the COPFS budget. This is fortunate given the claims represent a significant proportion of the COPFS annual budget and would otherwise have severely impacted the delivery of an effective service. The settlement of the claims will, nonetheless, be a regrettable cost to the public purse. <sup>29</sup>

45. In their evidence to the Committee, the Lord Advocate and the Crown Agent confirmed that the expenditure to date on payments from the cases totalled £35.3 million as of September 2021 and that no additional sums have as yet been requested for the cases where a payout has been made. <sup>30</sup>

46. Finally, in response to questions about Fatal Accident Inquiries and deaths in custody, the Crown Agent confirmed that there had been an over 50% increase in

reports of deaths in custody (46 in 2020-21) compared to the previous year (30 in 2019-20). The Lord Advocate stated that the modernisation undertaken by the COPFS in 2019 onwards had had a "significant impact on the age of cases that are going forward for a determination before a fatal accident inquiry". She said there has been a "real focus" on these cases and a "drive to ensure that we look properly at what underpins the difficulties that are associated with the figures for deaths in custody".<sup>31</sup>

47. In his evidence to the Committee on the proposed budgets for the courts service and the organisations involved in its operations, the Cabinet Secretary for Justice and Veterans acknowledged the "serious problem" of the trial backlog. His officials highlighted the £3 million investment in modernising court technology in the court system, alongside £10 million in digital evidence-sharing. The Cabinet Secretary also said that, generally, he'd "like far greater apportionment of capital spending, even if it comes down to using the Scottish Government's borrowing powers" and that we can "spend to save" on capital budgets to make future reductions in resource spending.<sup>32</sup>
48. **Our conclusions on the issues set out above are set out in the [final section](#) of this report.**

## Budgets for prisons, prison reform and secure care

49. The financing of our prisons, secure care system and funding for reform has been a focus of this Committee in previous sessions. Our predecessor said back in December 2019 that it was clear from the evidence taken by the then Committee and from the reports at the time from HM Inspectorate of Prisons in Scotland and Audit Scotland that the Scottish Prison Service was under substantial pressure. The session 5 Justice Committee said "this is not sustainable" and called for the baselining of a real-terms increase in the revenue and capital budgets for the Scottish Prison Service for 2020/21.
50. This year, the Committee's call for views was focussed on the following questions:
- Whether the Scottish Government is providing enough budget for the work expected of the Scottish Prison Service?
  - Whether enough money has been allocated for the future modernisation of the prison estate beyond the work currently underway at HMP Glasgow and HMP Cornton Vale?
  - Whether the current funding model for secure care in Scotland needs reformed?
51. In its evidence, HMIPS said that more than half of the 15 prison establishments exceed their design capacity and that locking people up often for 22 hours in a day does nothing at all to tackle criminogenic behaviour. HMIPS called for "a fundamental review of the assessment of criminogenic need matched to the provision of education, work, rehabilitative and training programmes for prisoners, to be conducted by the SPS" and said that it "expects that additional capital and revenue resources are required to deliver modern and appropriate skill and

employment opportunities for all prisoners to reduce recidivism." <sup>33</sup>

52. Overall, HMIPS questioned whether sufficient revenue resources are being provided for the SPS to deliver the outcomes that we should rightly expect of it.
53. APEX Scotland said the demands on the budget of the prison service will simply continue to increase as long as there is an on-going commitment to increase the estate to accommodate rising numbers instead of investing in measures which will actively reduce the demand for prison. It called for a rethink on how the third sector can carry out some of the services currently provided by SPS. <sup>34</sup>
54. The submission from the Howard League Scotland identified a number of cost pressures on SPS both before and as a result of the COVID pandemic, for example:
- Statements from the Scottish Prison Service 2019/20 Annual Audit Report to the Accountable Officer and the Auditor General for Scotland advising that SPS had identified a funding gap for 2020/21 of £19.2million, of which £10.8million related to COVID-19;
  - The Audit Report describing SPS as having to introduce a model where prisons routinely operated beyond their design capacity and without the requisite number of funded staff members. With no fiscal authority to increase staffing levels, Howard League Scotland said SPS was then forced to offer additional *ex gratia* payments of £5.763m to prison officers in order to maintain the safety of prisoners and staff. (This is an increase of 168% from 2016/17.)
  - The SPS's Annual Delivery Plan 2019-20 contained 20 Essential Actions of which only 10 had been delivered in full, with the remaining 10 being delayed or re-profiled "due to the unprecedented population management pressures, combined with the associated financial challenges." <sup>35</sup>
55. The Howard League Scotland concluded that—
- ” ... a radical shift in resources from prisons to community-based disposals is essential to the future of criminal justice in Scotland. However, such a shift will be possible only once prison numbers have been quite sharply reduced: until that can be achieved, Howard League Scotland does not believe that the Scottish Government is providing enough budget for the work expected of the SPS. SPS's budget needs to be increased, for the reasons given above; but an immediate priority for penal policy must also be a radical reduction in the numbers in prison. <sup>36</sup>
56. A number of submissions also commented on the current state of the prison estate and the question of whether further investment was needed. Families Outside, for example, welcomed the investment in two new Community Custody Units (CCUs) in Dundee and Glasgow. It said though that further funding will be required to support the implementation of a family visits policy in the CCUs. <sup>37</sup>
57. The Scottish Justices Association said that the "promised new Inverness prison is now long overdue, and we would wish to see activity with this new prison accelerated." <sup>38</sup>



58. In its evidence, HMIPS said "the recent investment in HMP Glasgow and HMP Highland is welcome, but well overdue, and still leaves Scotland operating prisons with Victorian features that bear no resemblance to a modern prison system, especially in HMP Greenock, HMP Dumfries and parts of HMP Perth." It added that—
- ” There needs to be sufficient investment by the Scottish Government and SPS to support the design and planning of replacement facilities for these three prisons, while recognising that planning consent and securing a site might put back the point at which major construction costs hit.<sup>39</sup>
59. In her evidence to the Committee, Teresa Medhurst, Interim Chief Executive at SPS said that a replacement for HMP Greenock was not currently in the five-year infrastructure investment plan and that a replacement for HM Dumfries also need to be added to that plan but that will "depend on capital resource coming to SPS from other parts of the public sector".<sup>40</sup> In his evidence, Gerry O'Donnell, Interim Director of Finance at SPS, said that it takes a minimum of 4 years to build a large prison after any plans had been added to the five-year investment plan.<sup>i</sup>
60. HMIPS also commented that, since 2017, there has been a 46% increase in the number of older prisoners, saying this added to the need to construct more accessible cells right across the prison estate. It also called for investment to move away from the use of smaller cells designed for one person but now routinely holding two people.<sup>41</sup>
61. HMIPS concluded by stating—
- ” HMIPS have seen no evidence to suggest that the SPS is sufficiently resourced to make adequate progress with these key capital projects and strategic initiatives alongside other competing pressures and important but routine maintenance projects.<sup>42</sup>
62. SPS responded to this point in their evidence to the Committee. They said that—
- ” We have definitely seen a significant rise in other social care needs. At the end of September [2021], I think that the number of those who require social care support was about 50. That might seem a small number in a population of 7,500, but it is nevertheless quite significant to us as an organisation, given that we have prisons that were built for prisoners and not for people who require additional support.
- In the newer and more recently developed prisons across the prison estate, there are accessible cells. The problem is that the number of people who require them exceeds the number of facilities that we have. We have therefore undertaken an assessment of additional needs, which can be anything from beds with pulleys, which require greater space, to better access to showers [...]
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<sup>i</sup> The first presentation of the plans for a replacement to HMP Barlinnie was made to Scottish Ministers in 2011. The Committee notes that a replacement for HMP Barlinnie is expected to be opened in 2025.

63. Finally, SPS also commented on a number of staffing matters raised by Committee members. Teresa Medhurst confirmed that SPS had been facing pressure on its staffing profile across its establishments as a result of moving back to a two-shift system (with the exception of two of its sites). She also confirmed that SPS was facing a vacancy rate of 19% in the F band salary rate and SPS was facing difficulties filling these posts despite advertising them.
64. In his evidence to the Committee on the proposed budgets for the prison service and prison reform, the Cabinet Secretary for Justice and Veterans said his government was committed to spending £545.7 million in improving the prison estate but accepted that they have as yet not been able to invest in replacements for HMP Greenock and HMP Dumfries.<sup>44</sup>
65. In terms of the women's estate, his officials accepted the figures presented by the Committee that there are only 230 places in the new custodial centres but that there are currently 400 prisoners. Scottish Government officials explained that the plan was to try to reduce the numbers held in prison but that there were "existing spaces for women in Grampian, Edinburgh, Greenock and Polmont".<sup>45</sup>
66. The Cabinet Secretary for Justice and Veterans accepted that prison population would rise as the court backlogs are tackled but that "it is hard to estimate the figures".<sup>46</sup> He said efforts would be made to try to reduce the overall numbers sent to prison and to look at tackling the presence of serious and organised crime groups in prison, the segregation of which he said took up space. He also planned to try to tackle remand numbers.
67. On this last point – remand – the Cabinet Secretary recently updated the Parliament on the numbers held on remand. He said "remand is now at 30 per cent of the prison population, which is too high."
68. Finally, in relation to the use of secure care for younger people, the Cabinet Secretary confirmed he was in discussions with the Convention of Scottish Local Authorities about the funding formula and a progress update can be expected early in 2022.
69. **Our conclusions on the issues set out above are set out in the [final section](#) of this report.**

## **Budgets for police and fire and rescue**

### **Policing**

70. The financing of the police service in Scotland was also the focus of our call for views this year, building on the work carried out by our predecessor and the then Justice Sub Committee on Policing. In its [conclusions](#) on the budget for 2021/22, the Sub-Committee commented on the resources provided for policing in general, for ICT, fleet and estates, to respond to COVID and also the scope for multi-year settlements for the service as is the case in the health service.
71. This year, the Committee focussed on the following questions:

- Whether the Scottish Government is providing enough budget for Police Scotland ?
- In particular, is there enough budget to modernise the services, their buildings, vehicles and equipment etc?

The Committee received a number of submissions of evidence in relation to its call for views. An overview of the evidence received is set out below.

72. In its submission, HMICS commented on the ongoing challenge of insufficient capital to fund the ambitions of the service, highlighting the example of the need to invest in key areas such as contact, command and control, forensics and detention facilities. HMICS also pointed out the statements from Police Scotland and the Scottish Police Authority that the key objectives and assumptions within the 5-year financial plan for the service would place "unsustainable pressures"<sup>47</sup> on the police budget if they were not fulfilled.
73. The submission from the Scottish Police Federation (SPF) was critical in a number of areas relating to budgets. The SPF said that—
- ” ... the police service will always be limited in its abilities to deliver evidence based, innovative policing approaches for our communities by the finance available to it. By any measure the unavoidable impact of lack of finance on resources, is a directly inhibiting factor for the delivery of policing.”<sup>48</sup>
74. The SPF added that the approach taken each year to the setting of the police's budget has, in its view, "ensured the police service was continually naval gazing in impossible attempts to deliver a balanced budget, regardless of the realities of policing demand". The SPF believed this has "shifted the focus of strategic leadership from actual leadership to bureaucratic intensive bean-counting."<sup>49</sup>
75. One of a number of examples of the challenges highlighted by the SPF is that of rest time. The SPF state that police officers have almost 50,000 rest days due to be re-rostered as a consequence of operational demand outstripping available resources. They say they are aware that almost 100,000 rest days have been re-rostered to future dates. They conclude that "It is patently clear the police service cannot keep taking working hours from its future resilience to shore up the demands of today, without a serious detrimental impact at some time."<sup>50</sup>
76. David Page of Police Scotland responded at the Committee meeting to the point about rest days. He said that the banked days equated to "only about three days per officer" and that Police Scotland must "manage the situation more effectively and more efficiently".<sup>51</sup>
77. In general the SPF describe a service which is in their view "robbing Peter to pay Paul" and "running on empty".<sup>52</sup> Other concerns highlighted included:
- Lack of experienced officers to provide pairing with probationary officers
  - Intolerable case work loads leading to stress and ill health
  - Backlogs in training

- A shortage of trained drivers
  - Poor quality of the police estate and some vehicles
  - Under-funded requirements such as the provisions of the Age of Criminal Responsibility (Scotland) Act 2019 which are putting pressures on the service.
78. In its submission, the Association of Scottish Police Superintendents (ASPS) said that "The continuous adding of responsibility and the allocation of new duties to the Police has been done with little consideration to the resource required to effectively deliver on these." <sup>53</sup>
79. ASPS stated that "priority work [is] required in the estate is to continue to make multi-occupancy buildings safe and compliant in terms of physical distancing, ventilation and sanitation, and to enable agile, smarter working." It also added that Police ICT systems are "largely not fit for purpose" and are time-consuming to use. <sup>54</sup>
80. In their own evidence to the Committee, Police Scotland and the Scottish Police Authority said that "if we continue to see pressures on our income budget into 2022/23 as a direct consequence of the pandemic then without government funding to meet this shortfall, we would have to reduce service levels to make savings". <sup>55</sup> When pressed at the Committee however, officials from these organisations were not able to detail what these reductions would be.
81. As noted above by HMICS, Police Scotland and the Scottish Police Authority warned the Committee that despite the additional funding the service had received, it "can only remain financially stable in future years if subsequent funding is in line with the commitment to real terms protection." They added—
- ” Our understanding of “real terms protection” is that funding will increase in line with unavoidable pay pressures, including pay award, national insurance increases, the impact of SPRM and reduced income directly associated with funded officers. It is also assumed that the financial implications of key legislation changes will be funded in full. <sup>56</sup>
82. Police Scotland representatives explained to the Committee that about 87% of the budget is spent on payroll costs and therefore financing for pay awards, increased National Insurance Contributions and to maintain staffing numbers was critical. As such, James Gray of Police Scotland explained that there would be "considerable pressure on non-pay costs" and in particular from a move to increased revenue costs from purchasing ICT services <sup>57</sup>
83. Police Scotland and the Scottish Police Authority noted the gap between the requirement of £466 million (for major and essential investment in the DDICT strategy, consolidating and improving the estate and modernising the fleet through embracing greener technologies), and the level of capital funding level expected which they said would be "approximately £218 million short over a 5 year period." They added that a lower settlement "would require prioritisation to meet health and safety needs, legislative requirements and replacement of core equipment" and that "this would substantially eliminate our ability to deliver estates transformation or

- public sector co-location projects".<sup>58</sup> The service warned that its transition to electric vehicles would top-out at approximately 40% of the fleet and only a small portion of the DDICT projects would be able to be taken forward. In their evidence, Police Scotland and the SPA said their 5-year planned required £466 million and they had received £248 million.
84. Police Scotland and the Scottish Police Authority also commented on the expected costs of policing COP26 and the assurances received on financing from the UK Government. They said they had had assurances that the UK Government would fund the expected £60 million of direct costs but they were anticipating upwards of £150 million when it came to the total final costs (excluding any costs that may result from litigation from anyone arrested). They pointed to a post-event "wash-up" meeting with the Cabinet Office and they expected "to be compensated for the full cost".<sup>59</sup>
85. Police Scotland and the Scottish Police Authority were also questioned on the use of non-disclosure agreements (NDAs) and the financial implications of these. James Gray of Police Scotland said that NDAs were "not something that I would expect us to use" and "we are not supposed to do them". However, he added later that "they might be circumstances in certain circumstances". David Page suggested that NDAs can be used legitimately in some cases, usually to do with confidentiality and to protect commercial circumstances. Chris Brown, acting CEO of the Scottish Police Authority said that he was not aware of any discussions with the SPA on the use of NDAs but offered to check.<sup>60</sup>
86. In a subsequent letter to the Committee, Mr Brown said "the SPA does not insist on or suggest the inclusion of NDAs, or confidentiality clauses, when entering into financial settlements with current or former members of staff. Over the past 5 years, the Authority has not used NDAs in relation to any member of its staff." He did not provide any comment on whether the SPA viewed the use of NDAs by Police Scotland as acceptable or whether the latter was required to discuss any planned use of NDAs with the SPA.
87. In his evidence to the Committee on budgets for policing, and on the funding for Cop26 specifically, the Cabinet Secretary for Justice and Veterans said he had made it clear "that the UK Government will bear all costs, including legacy costs" and said he was "quite satisfied with the assurance framework that is in place" with the UK Government.<sup>61</sup>
88. More widely, he said was "hopeful that it [the final budget] will be no less generous to the police than budgets have been in the past".<sup>62</sup>
89. Finally, on the use of Non-Disclosure Agreements, the Cabinet Secretary for Justice and Veterans said that their use was "legitimate" but that "such agreements should not be used to cover up extremely bad practice such as discrimination and harassment."<sup>63</sup>
90. **Our conclusions on the issues set out above are set out in the [final section](#) of this report.**

## Fire and rescue services

91. In relation to fire and rescue services, the sole submission to the Committee came from the Scottish Fire and Rescue Service (SFRS).
92. In its evidence, SFRS said that whilst it had managed to meet the costs of the recent challenges (such as an increase of £1.5 million in overtime forecasts), for example from COVID, the post-pandemic fiscal constraints would be "challenging" and there was a "need for additional funding for the Service remains if we are to both fully recover from the impacts of COVID-19 on the Service and its staff and to do more for the people and communities of Scotland as they too recover from the impact of the pandemic." <sup>64</sup>
93. SFRS reported that the provision of operational training, the attraction of new recruits, additional cleaning regimes (at a cost of £250,000 per year) and building inflation for maintenance (at a cost of £2.5 million in one recent contract) have all been issues they have, and continue to, face. In terms of training, SFRS said it will take about 2 years to clear the backlog and get back to pre-pandemic levels. <sup>65</sup>
94. As with the police service, SFRS report significant problems with their estate, describing a significant proportion of their 357 stations as "neither fit of purpose in terms of building condition or suitability for a modern service". SFRS said—

” Approximately 61% of our fire stations are over 30 years old; 52% have been assessed as being in a poor or worse condition. Critically in terms of suitability over 45% of properties have been assessed as poor, showing major problems and not operating optimally, whilst 15.7% are classed as bad. Based on this information it is clear that the SFRS property assets do not support the delivery of services. <sup>66</sup>
95. SFRS said it receives a capital grant from the Scottish Government of £32.5 million in 2021/22 and says this is "inadequate" for its needs. It also points to an Audit Scotland [report](#) in 2018 that SFRS had an "insurmountable capital investment backlog". It said that around £80 million per year was needed according to Audit Scotland to bring property, vehicles and assets up to a minimum satisfactory condition, whereas SFRS was receiving an average of £30.2 million per year. <sup>67</sup>
96. In his evidence to the Committee on budgets for the fire and rescue service, the Cabinet Secretary for Justice and Veterans said he remained "receptive to the fire service's asks notwithstanding the overall budget position". <sup>68</sup> He also said that there had been a lot of discussion on "whether assets are fit for purpose and appropriate or whether we would say that there should be further rationalisation" <sup>69</sup> , noting that "the service is able to draw down capital receipts from the sale of its properties". <sup>70</sup>
97. **Our conclusions on the issues set out above are set out in the [final section](#) of this report.**

## The support for victims of crime

98. Victim Support Scotland said that the Scottish Crime and Justice Survey estimates that the police only became aware of 40% of crime in 2019/20, a similar proportion to previous years and that, because of this, there is only likely to be further demand for Victim Support Scotland services and support from other agencies.<sup>71</sup>
99. They added that Victim Support Scotland was able to meet the unprecedented demand for its Victims' Fund in large part due to the Scottish Government making more emergency funding available as part of its COVID-19 measures. In its view, the ability to continue doing so, and the role the Victim Surcharge Fund can have in supporting this once it has been in place for longer and more accurate forecasting can be conducted, remains to be seen.<sup>72</sup>
100. The Wise Group said that it believed that this is not so much a question of whether enough funding is being provided to organisations to support the victims of crime, but rather where are the gaps that providing funding could help to reduce the number of victims of crime. In its view, reducing re-offending would be a pragmatic and effective example of preventative spending and would be a way of reducing the number of victims of crime and therefore allowing resources to go further.<sup>73</sup>
101. One organisation - APEX Scotland - and an individual - Tina McGreevy of McGreevy & Co., Solicitors, stressed the importance of not just focusing on victims of crime but also on the need to also provide support to those accused of crimes.
102. In his evidence to the Committee, the Cabinet Secretary for Justice and Veterans commented on proposed budgets for victims support. He said that the government was now investing £18 million in the victim fund, and that he expected the victim surcharge fund to rise over time from £157,000 to £1 million per year. He also said he was not able at this stage to say how much the establishment of an office for a victim's commissioner would cost.<sup>74</sup>
103. **Our conclusions on the issues set out above are set out in the [final section of this report](#).**

## Budgets for legal aid

104. This year's call for views set out a number of questions specifically focused on the provision of legal aid:
- Whether the Scottish Government is providing enough budget to enable people to access justice through the support provided by legal aid in criminal cases?
  - Whether further budget and reforms are necessary to tackle the problem of accessing legal aid in remote and rural areas of Scotland?
  - Whether the Scottish Government is providing enough budget to attract people to work for organisations providing services funded by legal aid (e.g. defence solicitors)?

105. These were posed specifically by the Committee to respond to the high-profile campaigns and concerns around the funding of legal aid and the suggestions that there are problems with the financial sustainability of firms and individuals providing services funded by criminal justice legal aid.

106. The submission by Kelly Howe was typical of many received in this respect. She said—

” Criminal defence work is underpaid, undervalued and legal aid practitioners are leaving at a worrying level. They are over worked are expected to work long hours, anti social hours, now public holidays and hear every now and again the possibility of Saturday courts. It is an ageing bar for a reason. The profession is in crisis and there are less people willing to volunteer to do such a role, preferring COPFS (for better pay and conditions) or an alternative career. It is becoming impossible to work as a criminal defence lawyer with caring responsibilities or as a single parent. The role is now (probably rightly) identified by the younger members of the faculty as without a sustainable future, no prospects, without reasonable remuneration, without recognition of out of office hours work, no public holidays and zero work life balance. The strain on those that remain in practice is becoming unbearable and impossible.

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107. The Scottish Justices Association said in its submission that—

” This is a perpetual problem identified by the empirical evidence of members of the SJA. Whilst recognising the limited funds that are available a significant number of cases are delayed due to legal aid funding being sought. There has been an increase in the number of self-represented accused in the JP Courts and this does provide challenges to ensuring that justice is done and seen to be done, due to the accused lack of familiarity of court processes and procedures. We would not advocate an unlimited supply of funds but greater access to funds and a quicker assessment process would be welcome. <sup>76</sup>

108. The Howard League Scotland said that whilst it accepted that provision of defence solicitors is geographically uneven and the shape and size of the market determines that, "meaningful reform to the legal aid system, as a whole, is likely to take some time and may require a nuanced, tailored approach". They stated that this did not "negate the need for an immediate increase in the budget for this financial year to enable people to access justice through the support provided by legal aid in criminal cases." <sup>77</sup>

109. In its written submission, however, the Scottish Legal Aid Board said that it did not believe there was an issue with the provision of legal aid advice in remote and rural areas. It said—



- ” ... we have not seen evidence of widespread or systemic problems with accessing criminal legal aid, either generally or in remote and rural areas. Our last survey of those that had applied for criminal legal aid, conducted in 2018, suggested that few had experienced any difficulty in finding a solicitor to act for them. Of 388 respondents, 5% indicated that it had been difficult to find a solicitor, and of these only 5 individuals suggested that this was because there were not many lawyers in their area. We are running a further round of this survey during October/November 2021.<sup>78</sup>
110. In subsequent evidence to the Committee, Colin Lancaster, CEO of the Scottish Legal Aid Board was asked about "legal aid deserts" and stated that, in his view, there were "isolated problems, but nothing that would point to the system not working, or to there being big issues with it."<sup>79</sup>
111. The Committee also received a number of submissions stressing how challenging it was attracting new people into the profession to provide criminal justice services. For example, Bryan John Morgan said that he had decided to terminate his legal studies upon reflecting on the legal aid for defence solicitors and mental health tribunal work. He concluded that it "just wasn't attractive therefore [he] departed and forgot about a legal career."<sup>80</sup>
112. Similarly, Kelly Howe said she had experience of having lost 6 solicitors over the past 6 months and have recruited only one to replace those. In her firm, three of those that left the profession were associates with what ought to be regarded in any other profession as a sign of good career prospects. She said she worried where the next set of advocates, solicitor advocates, advocate deputes and sheriffs will come from in the not too distant future and what experience they will have of assisting and navigating a criminal accused through self representation.<sup>81</sup> This was a point also made by the Faculty of Advocates.<sup>82</sup>
113. In his evidence, Terence Gallanagh said in his firm—
- ” It is impossible to attract staff. My firm need at least 2 new lawyers. We have advertised for months without a single applicant. We have tried to plug the gap with trainees who can now appear in court after approx 3 months but it not fair to clients, the trainee or the court to have them conducting complex trials for people facing jail or conviction for life changing allegations. This is a genuine emergency.<sup>83</sup>
114. Fiona McKinnon commented on the comparators between salary rates in the private sector and those in the public sector such as in the COPFS. She quoted salary levels for a newly qualified solicitor in private practice who could receive £25,000 per year whereas someone joining the COPFS would, she said, receive £42,000.<sup>84</sup>
115. In her evidence to the Committee, the Lord Advocate said that—
- ” The vast majority of recruits do not come directly from defence practice; indeed, 40 per cent of them are our own home-grown trainees. We are the largest recruiter of trainees across Scotland and have been for some years, and that approach has created benefits at times such as these.<sup>85</sup>

116. She added, however, that—

” ... it is important to the Crown Office and Procurator Fiscal Service that we have a well-functioning, well-served criminal defence bar in Scotland. The rule of law requires it. In any system of prosecution of crime, it is essential that the rights of an accused person are properly protected and that the accused person is properly represented at trial. Therefore, it is in the interests of all of us—the Crown and the public—that there is a strong defence bar. <sup>86</sup>

117. Finally, a number of organisations - APEX Scotland and the Scottish Justices Association for example - raised a wider issue in relation to the availability of legal aid for those accused who do not have English as their first language. The SJA said "it would be helpful to have the legal aid service given a higher profile amongst ethnic minority communities." <sup>87</sup>

118. Responding to questions from the Committee on some of these matters, Colin Lancaster of the Scottish Legal Aid Board pointed out that—

” Over that 10-year period, the amount of business available to be done by firms, particularly those that specialise in criminal work and that might find it harder to divert capacity into other areas of business, will have fallen fairly significantly. There has been a 35 per cent reduction in prosecutions and a 32 per cent reduction in criminal legal aid expenditure over the 10-year period. Those things will not be without their impacts on those who deliver the service. <sup>88</sup>

119. In his view, there were questions that should be addressed to the legal profession in terms of its business or operating model - primarily a significant number of small firms with one or two practitioners - and whether collaboration or a consortium approach across a number of firms would help make the work more manageable, such as dealing with late-night call outs. He suggested that the profession had not responded to the changes in provision that were a consequence of the Cadder judgment and the Criminal Justice (Scotland) Act 2016. <sup>89</sup>

120. **Our conclusions on the issues set out above are set out in the [final section](#) of this report.**

## **Financing the policies and legislation in the Scottish Government's Programme for Government**

121. In addition to the above issues, the Committee wanted to hear views on whether the Scottish Government was providing adequate funding to finance the wider policies and legislation proposed as part of its yearly Programme for Government.

122. Families Outside noted that there were three bills as part of the upcoming legislative programme that could have an impact on the justice system:

- the Bail and Release from Custody Bill;
- the COVID Recovery Bill; and

- the National Care Service Bill.

It said that the resources currently in place across the third sector are stretched, and it requested that additional resources are made available through these bill proposals where appropriate.<sup>90</sup>

123. This was a point similar to that made by Alan Staff of APEX Scotland who said that there was "very little recognition of the role of the third sector in spite of the fact that it contributes to around a third of all justice activity in Scotland". He added—

” The continued belief that allocating funding through Local Government will somehow filter through to external contracts with the sector has been shown over the last decade to be fundamentally flawed with increasing percentages of allocated funding being needed for core statutory activity and away from more community based and preventive or recovery based activity. Either there is greater requirement on local government to show how they are supporting the third sector as delivery agents, or there has to be earmarked funding specifically aimed to making greater use of the resources available from the sector and the efficiencies which these can offer.<sup>91</sup>

124. He added that funding is urgently required for services which support and rehabilitate the growing number of prisoners released with 'toxic' offending records such as sexual offences, hate crimes and domestic violence. In his view, this cohort face significantly greater challenges in resettlement as well as posing potential risk management issues, yet currently are expected to be managed within generic services, most of whom will not accept the additional complexity or risk attached. He added that ignoring this group would be dangerous for community safety and well-being, so APEX Scotland "called for specific funding to enable safe and effective activity for this group to be available widely across Scotland".<sup>92</sup>

125. In its submission, HMICS noted that the Programme for Government included a commitment to "start work to ensure access to 'Bairns' Hoose"<sup>ii</sup> by 2025", but that there was no indication of budget allocation.<sup>93</sup>

126. The Faculty of Advocates said that sufficient funds needed to be made available and put in place to address the problems highlighted by them in relation to a sustainable court system and particularly in relation to encouraging more graduates seeking traineeships and newly qualified lawyers to take up a career in criminal defence work.<sup>94</sup>

127. In its submission, Social Work Scotland highlighted the forthcoming bill on bail and release from custody, warning that the proposals may suggest reserving remand for those at risk of serious harm, therefore casting a spotlight on the risk assessment issue at the court stage i.e. who does it, what assessment tool is used, etc. If this was the case, they expected the demands on justice social work to increase.<sup>95</sup>

128. Social Work Scotland also believed that there may be significant implications for them relating to the plans for release for prison, including perhaps amending the Home Detention Curfew model (making it automatic for low-risk prisoners) and the

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ii A Barnahus or Children's House.

whole issue of support for prisoners on release, particularly for short-term prisoners (e.g. strengthening the duties on public bodies, possibly through introducing minimum standards for voluntary throughcare) and support for those remanded in custody. Whilst they supported the principles, they said this "would require sufficient funding to ensure they can be successfully delivered; both in respect to building the workforce base (numbers and skills) necessary to do the work, and support through the process of implementation (learning from those areas, in Scotland and beyond, who have experience and learning)." <sup>96</sup>

129. In written evidence to the Committee, SCTS said that a number of the high-level commitments announced in the new Programme for Government will have financial implications for it, but that "it is not possible to quantify these in detail until the proposals themselves are developed more fully". They highlighted the recommendations contained in the Lord Justice Clerk's Review of Sexual Offending, the proposed review of how offending is dealt with by the summary justice process, and planned reforms to the system of bail or remand. <sup>97</sup>
130. **Our conclusions on the issues set out above are set out in the [final section](#) of this report.**

# Conclusions and recommendations

## The justice sector budget in 2022-23: our view on what is required

131. The justice sector, like many others, has been greatly affected by the pandemic. The impacts felt on its operations by COVID-19 are not over. Although some recovery and return to normality is underway, the effect of the virus will continue to be felt in 2022-23 and possibly beyond. The Committee pays tribute to staff in all the different bodies that make up the sector for their immense effort in keeping the system functioning during these challenging times.
132. The Committee welcomes the injection of funds to help deal with the pandemic and begin to fund its recovery. This has been beneficial in the justice sector, but more is going to be required. To echo the words of the Cabinet Secretary for Justice and Veterans, "COVID-19 has not gone away".<sup>98</sup>
133. In our pre-budget scrutiny, we have heard compelling evidence that the justice sector faces significant challenges in the next financial year and beyond. Chief among these is the impact of the pandemic on the backlog in our courts. To take one example, before the pandemic, there were 1,330 trials outstanding in our sheriff and jury courts. Now there are in excess of 3,500. Behind every one of these cases is a victim of crime and an accused waiting for trial for significant periods of time.<sup>99</sup>
134. As we start to recover, the impact of tackling this backlog will have a massive effect that will be felt right across the system. The courts will be much busier, with greater demands placed on our judges, prosecutors, defence agents, victim's support organisations, expert and police witnesses, social work etc. Inevitably, a substantial proportion of those on trial will be sent to prison, placing greater demands on an already stretched prison service.
135. These challenges will come on top of a justice system that continues to face significant problems. We already have issues with the size of the prison population, the numbers of women being incarcerated and the numbers of all types of prisoner held on remand. We also have challenges in addressing the issues within prisons such as tackling drug misuse, modernisation of the estate, improving prisoner welfare, dealing with the influence of serious crime groups in our prisons etc. We also see wider problems in the justice sector including the record levels of drug deaths in Scotland, the need to further invest in our police and fire and rescue services, resolving issues with the legal aid regime, tackling the low levels of successful prosecutions of sex offences and addressing the lack of confidence in victim support schemes.
136. This Committee welcomes the efforts being made by many to tackle these issues. There are many examples of good practice and innovative working.
137. We recognise that - although not sufficient in and of itself - additional money for the sector will help, but that the sums available are not unlimited given the demands on finance felt right across the public sector.

138. In the first instance, we recommend that the Scottish Government considers conducting an assessment of the current budgets and expenditure of the major bodies in the justice sector to look at whether there is scope to use existing expenditure more effectively. That could be through:

- The introduction of innovative practices;
- Looking at alternatives to custody programmes;
- The re-use of underspend in one body elsewhere in the system;
- Efficiency savings;
- Spend-to-save investments; and
- A sale of assets and a reduction or elimination of waste (such as the millions now having to be spent on malicious prosecutions).

139. Notwithstanding, if some of the problems we have identified above continue, then the current budget levels will be insufficient and there is therefore a case for an overall increase in the budget for this sector.

140. It is our view that the current budget challenges are a symptom of the wider problems in the justice sector that have not been significantly addressed over many years. Because these major challenges have not been tackled, we are now facing the need for even greater investment. There is an interrelationship – and the report contains several examples of where comprehensive reforms in areas such as prisons will deliver improvements to the budget position. We recognise that there has been progress on tackling certain issues in the justice sector over recent years, but more must be done to make rapid progress and resolve the systemic problems in the sector, many of which have been with us for a number of years and which have been studied by successive justice committees, government reviews and academic studies.

141. The provision of adequate finance will be one key component of addressing some of these problems to help speed up the delivery of some of the solutions already identified. If radical changes are made to tackle the systemic issues in the sector, then this may lead in time to the possibility of reallocating money between different sectors in the system. For example, if there is a move to reduce prison numbers, then there may be scope to redirect funding to community justice and community support services. However, we cannot simply rely on the re-direction of funding to meet the serious challenges ahead. The Committee would want the Scottish Government to explore additional funding that would be more radical and be likely to break the cycle of long court delays, overcrowded prisons and a high remand population.

142. We believe that targeted investments now - on a spend-to-save basis - in projects such as diversion from prosecution/incarceration schemes, recovery cafes and residential rehabilitation programmes, and digital justice, where appropriate, across the sector will all deliver savings in the longer term.

143. In addition to providing adequate and sustained financing over a number of budget cycles, there is a need for government, supported by this Committee, to show leadership and co-ordinate efforts through a clear and collective long-term strategy across all the main public bodies – courts, prisons and policing – to deal with the challenges as we come out of the pandemic as well as tackle the systemic problems in the justice sector.

144. In the first instance, we recommend that the Cabinet Secretary and his main justice partners, provide this Committee with a strategy document setting out how all the main parts of the sector are going to deal with the impact that the necessary efforts at tackling the court backlog are going to have across the sector, e.g. on prison populations. We want to see evidence of long-term planning and joined-up thinking, underpinned by published analysis and modelling of what may happen as we start to address the backlog in the high court, sheriff and JP courts.

## Recovering from the pandemic

145. We recognise that the injection of funds during the pandemic from both governments was unprecedented and cannot continue indefinitely. Nevertheless, as identified above, a further tranche of finance for COVID recovery funds is likely to be required in 2022-23, particularly to fund recovery and transformation.
146. During this recovery and transformation process, we believe there is scope for future savings to be made from the adoption of different ways of working. Any such savings have to be reinvested in the justice sector.
147. The Committee will be publishing a report in the coming weeks on other recommendations we are making on tackling the impact of the pandemic on the sector.

## Our court system

148. Tackling the backlog in court cases and the knock-on effects that will be felt across the other parts of the sector as a result is one of *the defining* challenges in the period to 2024-2025. We have some 32,400 trials outstanding in the sheriff courts, nearly 7,900 in JP courts and in excess of 3,500 in the sheriff and jury courts.<sup>100</sup> The Committee considers this to be a significant barrier to justice. The impact on victims, witnesses and accused persons will have a huge impact on their lives. The Committee believes strongly that we must act to reduce the delay now. There is also a disproportionate effect on women and children which needs specific action.
149. Innovative solutions are going to be needed to address this. But any such solutions must enjoy the support of the sector and any fundamental changes to the ways we currently conduct business must be carefully studied and the impact on rights considered. The balance of justice must also not be undermined by any changes.

150. The Scottish Government should identify early on what changes would meet the test as more efficient and allow for cost savings and meet the standard of fairness. The Committee believes there should be immediate discussions with the relevant sectors. Adequate financing for transformational change in court processes will be needed and could deliver savings in the longer term. This should build on existing work on digital technologies in the court process.
151. With public sector budgets tight and monies for the justice sector constrained, the expenditure of taxpayers' money on payments for malicious prosecutions is extremely regrettable and may have compromised the overall administration of justice if costs are taken from the justice budget. Lessons do need to be learned in due course when the results of inquiries are published. The Scottish Government needs to continue its commitment that any costs for these prosecutions are not taken from the justice budget, but come from other core funds or reserves. We also look forward to being informed about the exact terms of reference of the public inquiry and its likely cost.

## **Prisons and prison reform**

152. This Committee - as it has done with other organisations in the sector - wants to pay tribute to the efforts of the management, staff and other third sector bodies involved in the running of our prison service. The challenges of keeping the system functioning during the pandemic have been immense.
153. Nevertheless, it is clear that the regimes in prisons have been significantly restricted and the rights of prisoners curtailed. It has also placed huge strains on prison staff and management. This situation has to be addressed and real investment will be required to do so.
154. In addition to investment over the longer-term, the Committee believes that there is a case for modest (cost-wise) initiatives that could disproportionately improve the experience of prisoners in the short to medium term. For example, we recommend that there is a short term of injection of funds for recovery cafes in each institution across the SPS estate where these are appropriate. We also need to fund the restart of the throughcare initiative and make sure that the Scottish Prison Service (SPS) has sufficient front-line staff to be able to operate this scheme as many of the relevant officers have had to be redeployed elsewhere. We must build on existing efforts to stop the revolving door in our prisons and look at greater funding for effective alternatives to prison where appropriate.
155. On top of this, this part of the justice system faces huge systemic and long-term challenges:
- in overall prison populations;
  - remand levels;
  - the condition of the estate;
  - the length of time it takes to build new prisons;
  - staffing levels;



- drugs misuse/smuggling of contraband;
  - the lack of purposeful activity;
  - the lack of in-cell technology;
  - dealing with older/disabled prisoners; and
  - violence levels and the presence of serious/organised crime groups.
156. The Committee is of the view therefore that there is a case for sustained, above inflation injection of funds into the prison budget, allied to a clear, long-term strategy to address these problems.
157. The Committee also wants the Scottish Government and the SPS to address its recruitment gap. There are, in our view, far too many senior positions being filled on an interim or acting basis. This can lead to uncertainty. We recommend that any appointment process for these positions are completed as soon as possible.
158. The Committee will be publishing a report in the coming weeks on other recommendations we are making on prisons and prison reform.

## Police and fire and rescue services

159. This Committee commends the work of Police Scotland and the Scottish Fire and Rescue Service (SFRS) over the pandemic and also during the recent challenges posed by the Cop26 event in Glasgow. Whilst there will be lessons to learn and there are some examples of policing that need looked at, overall, the work of these services seems to have been successful.
160. This Committee welcomes the extra investment that has been provided to Police Scotland in last year's budget. As Police Scotland noted, an additional £15m funding was provided in 2021-22 to support the in-year impact of COVID-19.<sup>101</sup> As noted by them, this funding was sufficient to manage the financial impact of COVID in this financial year. Also, again as stated by Police Scotland and the Scottish Police Authority (SPA), the uplift to core policing funding allowed the Authority to eliminate the structural deficit and set a balanced budget without the requirement for workforce reductions.
161. Whilst this is to be welcomed, Police Scotland and the SPA identified a gap in capital funding between the sums they believe are necessary to improve conditions and equipment for the wellbeing of officers and staff, to enable a better service to be provided to the public and create time saving efficiencies through the use of newer technologies, and those currently provided. Specifically, they suggest that a total requirement of £466 million is needed in capital investment over 5 years and there is currently a shortfall of £218 million over 5 years in terms of the level of investment.<sup>102</sup>

162. The Committee believes that further sustained increases in capital budgets for

both the police and fire and rescue services are going to be needed (for estate modernisation, digital ICT and the fleets (including the greening of the fleet)). In the meantime, we recommend that the SPA and SFRS should conduct an estate review and look at the options for further savings and co-location opportunities, provided that these are suitable and also that this does not simply transfer current budgets into rent payments to a third party with no saving involved.

163. We also recognise that, in addition to the pandemic, a significant challenge for these services has been the Cop26 event. We are reassured that the Cabinet Secretary believes that discussions to date on the UK Government covering the costs have been fruitful.
164. A further, significant challenge to the police is that of tackling serious and organised crime in Scotland. The presence of groups and individuals carrying out crimes has both an immediate impact on our streets and also in our prisons as SPS tries to ensure the separation of those involved in rival gangs. We intend to meet with Police Scotland shortly to discuss this in more detail. In the meantime, it is not immediately clear to us what resources are currently in place to tackle serious and organised crime.
165. We request that Police Scotland and the SPA provide us with a breakdown of what is currently in place and the levels of funding being provided. It would also be helpful to set out what sums are currently recovered from such crime groups through asset recovery schemes. We know that the impact of the recent arrests which involved the use of the encrypted platform Encrochat is going to be a substantial drain on resources and time of the police and courts.
166. Finally, the Committee has concerns about the use of non-disclosure agreements (NDAs) and the mixed messages provided to the Committee on the acceptability of their use. In our view, the use of taxpayers' money for NDAs should rarely be acceptable and they should only be used in very exceptional circumstances. We agree with the Cabinet Secretary that they should never be used to cover up cases of bullying, harassment etc. The Committee expects to return to the issue of the culture of policing and reform of the complaints session later in this session.

## Community justice

167. As with diversion from prison and from prosecution more generally, the Committee believes that community justice services and community based support programmes will play an increasingly important role in the years ahead. They too have been impacted by the pandemic, for example, the challenges placed on local authority staff to manage community payback orders during the pandemic or the challenges for third sector organisations to carry out their work.
168. As such, we welcome the increase of around £2.5 million in relation to community justice services for COVID funding, specifically for commissioning third sector services to support and bolster recovery. We note that, in relation to the central government grant to local authorities for criminal justice social work, the Scottish budget sets out the same figure for each of the three years 2019-20, 2020-21 and

2021-22, that is £86.5m.

169. Whilst we welcome this funding, we note the figures provided to us from Social Work Scotland that the result of tackling the court backlog will result in an increase of business/demand for criminal justice social work of over 30% above pre-COVID levels until 2026. To put this in context, the number of community payback orders nationally pre-COVID was around 16,500 per year. A 30% increase would mean an extra 5,000 – 5,500 orders.<sup>103</sup>
170. The Committee also notes the evidence from Scottish Government officials that COVID has changed the way that CPOs can be delivered and that some elements of community justice have worked well through the adjustments that were made for COVID, but that other elements have not, and that lessons need to be learned from that.
171. We echo the call from Social Work Scotland that whilst the extra money was welcome, it was only provided for one year and the delays in receipt meant that the sector had little time to plan and had no guarantee of continuing support for community justice initiatives during the recovery period.<sup>104</sup>
172. Community justice programmes and funding for third sector organisations that provide core services more widely is one area where we would like to see a move to multi-year funding or at least commitments as part of the budget process.
173. Finally, we note that the Scottish Government has also committed to the development of a new National Community Justice Strategy. It will be important that this is adequately funded. It would be helpful to the Committee if the Scottish Government provided an update on the timetable and scope of any new strategy.

## Support for victims, fatal accident inquiries and deaths in custody

174. As indicated above, the work of Victim Support Scotland and of other bodies is going to increase as we begin to tackle the court backlog. As such, additional financing may be required. Part of this could come from efforts to ensure that the Victim Surcharge Fund is fully operational.
175. It will also be necessary to review and reform some of the programmes that are currently in place to inform victims of crimes. For example, we are disappointed to hear that bodies such as Victim Support Scotland describe the Victim Notification Scheme as “not fit for purpose” during a recent roundtable that we held.<sup>105</sup>
176. The Committee supports the concept of a Victim’s Commissioner and will study any proposals in depth in due course. In our view, the post would need adequate funding and any such funding should not be drawn from other service providers. The Committee is aware that the [Victims Taskforce](#) is involved in looking at the possibility of having a Victims Commissioner. This has included at least some consideration of the potential costs. It would be helpful if the Cabinet Secretary provided an update to the Committee in due course.

177. This Committee also supports a radical overhaul of the Fatal Accident Inquiry (FAI) system and of the reviews for deaths in custody as a matter of priority in this parliamentary session. It is no longer acceptable for the families of those that have died to wait years for resolution. Recent reviews undertaken by academics and some of the families involved provide a blueprint for reform.<sup>106</sup> We believe this must be tackled as a matter of urgency and may require additional resources which may not in itself be sufficient without other changes.
178. The Committee is aware that there have been issues with the contracts relating to the University of Glasgow, and that delay in providing toxicology reports had a consequent impact on the ability to conclude post-mortem reports. We welcome the reassurances from the Lord Advocate that the issues have been resolved, but we note that there is now an issue of tackling the backlog. We also welcome the comments from the Crown Agent that a procurement exercise is under way in relation to pathology services. We believe it is important that these issues are addressed.
179. The Committee will be publishing a report in the coming weeks on other recommendations we are making in this area.

## **The legal aid system**

180. It is clear to this Committee that there are both immediate and ongoing problems with the legal aid system. The dispute over the arrangements for weekend custody courts during Cop26 and the wider concerns with the system for fees have been made abundantly clear in the evidence we heard. Whilst we are aware that most in the legal profession prefer the current system to the reform proposals, it is our view that the failure to address the problems with fee levels has caused a loss of confidence of many.
181. We welcome the Scottish Government's statement that it will bring forward a bill in this area. However, we believe that consideration has to be given to accelerating the consultative work on this and the bill's introduction. It is not sustainable to wait a further year or two before starting any consideration of a bill
182. We are aware that the Scottish Government has intended there to be a periodic review of fee rates as recommended in the Evans Review. However, we do not currently have any agreement on a methodology for achieving that. We therefore recommend that immediate action is taken on fee rates while work is carried out to establish a methodology to take place as soon as possible.
183. Furthermore, the Committee notes the evidence that there now appears to be a noticeable gap in the pay and conditions of the defence sector compared to lawyers working for the prosecution. We accept that the Scottish Government has no real way of controlling the employment arrangements of defence solicitors (they are not employed by the government). Nevertheless, if fee rates do not allow for acceptable working conditions for defence solicitors then there are going to be implications for equality of arms between defence and prosecution lawyers and therefore in the delivery of justice. The Committee believes this should be resolved with this principle in mind.

184. There is a role for the Public Defence Solicitors Office (PDSO) and the Committee would like the Scottish Government to assess the effectiveness of it, including asking users, and also to explore what additional roles the PDSO can play.
185. The Committee will be publishing a report in the coming weeks on other recommendations we are making in this area.

## **Drug deaths and tackling drugs misuse and the criminal justice system**

186. The record levels of drugs deaths in Scotland and the impact of drug misuse in the criminal justice system is the other defining challenge we believe needs to be prioritised, alongside managing the impact of addressing the court backlog. We further recognise that there are efforts already underway through the Drugs Taskforce and that the scrutiny of this will require cross-committee working in the Parliament.
187. We welcome the work of the Scottish Drugs Taskforce to date and the recommendations that it has already made, some dating back to April 2020. We are concerned, however, with the speed of delivery of these and their implementation given the urgency of this crisis.
188. The Committee will be publishing a report in the coming weeks on other recommendations we are making in this area.
189. In the meantime, as mentioned above, we believe there should be an injection of relatively modest funds in the short term for recovery clinics in each prison where appropriate, and also for residential rehabilitation and community day centres.
190. Investment - on a spend to save basis - in diversion from prosecution and penalisation schemes is paramount and, over the first months of the work of this Committee, we have heard that supply does not meet demand for these schemes. We believe that such schemes can be particularly effective within our prisons as the clientele would be a 'captive audience' during their time in prison.
191. It is not immediately clear from the budget information available to the Committee what sums of money from the Scottish Government is being provided for such schemes given that they straddle the criminal justice sector, the health sector and local government spending. The Committee requests that the Scottish Government provides us with a breakdown of what is currently in place and the levels of funding that being provided across the portfolios.

## **Funding for the Programme for Government**

192. This Committee wants to see the Scottish Government ensure that adequate funding is in place to fund the main legislative and policy proposals in the Programme for Government. There is a danger that the proposals could fall short or not be fully implemented without the requisite financing.

193. This will include funding for the provisions in the Fireworks/Pyrotechnics Bill, the Bail and Release Bill, the Permanence/COVID Recovery Bill and the criminal justice provisions in the National Care Service Bill. We look forward to our scrutiny of all of these bills.
  
194. We urge the Scottish Government to ensure that it provides clear and detailed Financial Memorandums for each bill, the contents of which having been informed through open and wide consultations with all affected by any particular bill or policy proposal.

# Annex

## Written and Oral evidence links

The Committee took oral evidence at the following committee meetings:

- [6 October 2021](#)
- [3 November 2021](#)
- [10 November 2021](#)

A total of 37 written submissions of evidence were received. These are available [online](#).

- 1 Scottish Government, Draft Budget 2021/22.
- 2 Ibid
- 3 APEX Scotland, written evidence.
- 4 Scottish Justices Association, written evidence.
- 5 Faculty of Advocates, written evidence.
- 6 Scottish Courts and Tribunals Service (SCTS), written evidence.
- 7 Ibid.
- 8 Ibid.
- 9 HMIPS, written evidence.
- 10 Social Work Scotland, written evidence.
- 11 Op. cit.
- 12 Op. cit.
- 13 Op. cit.
- 14 SCTS, written evidence.
- 15 Ibid.
- 16 Criminal Justice Voluntary Sector Forum, written evidence.
- 17 Official Report, 10 November, col 3.
- 18 PCS, SCTS Branch, written evidence.
- 19 FDA, SCTS Branch, written evidence.
- 20 Official Report, 3 November, cols 4-5.
- 21 SJA, written evidence.
- 22 Inspectorate of Prosecution, written evidence.
- 23 Official Report, 3 November, col 8.
- 24 Op. cit, col 7.
- 25 Ms McKinnon's submission was made as an individual.
- 26 Fiona McKinnon, written evidence.
- 27 Tina McGreevey, written evidence.
- 28 Op. cit
- 29 Op. cit.



- 30 Op cit, col 23.
- 31 Op. Cit, col 24.
- 32 Official Report, 10 November, col 6.
- 33 HMIPS, written evidence.
- 34 Apex Scotland, written evidence.
- 35 Howard League Scotland, written evidence.
- 36 Ibid.
- 37 Families Outside, written evidence.
- 38 SJA, written evidence.
- 39 Op. cit.
- 40 Official Report, 3 November, col 36.
- 41 Op. cit
- 42 Op. cit
- 43 Op. cit, col 38.
- 44 Official Report, 10 November, col 23.
- 45 Op. cit, cols 25-26.
- 46 Op. cit, col 27.
- 47 HMICS, written evidence.
- 48 SPF, written evidence.
- 49 Ibid
- 50 Ibid
- 51 Official Report, 6 October, cols 13-14.
- 52 Op. cit
- 53 ASPS, written evidence.
- 54 Op. cit
- 55 Police Scotland/The SPA, written evidence.
- 56 Ibid
- 57 Op. cit, col 5.
- 58 Op. cit

- 59 Op. cit, cols 16-17.
- 60 Op. cit, cols 22-23.
- 61 Official Report, 10 November, col 6.
- 62 Op. cit, col 14.
- 63 Op. cit, col 11.
- 64 SFRS, written evidence.
- 65 Ibid.
- 66 Ibid.
- 67 Ibid.
- 68 Official Report, 10 November, col 19.
- 69 Op. cit, col 20.
- 70 Ibid.
- 71 Victim Support Scotland, written evidence.
- 72 Ibid.
- 73 The Wise Group, written evidence.
- 74 Official Report, 10 November, cols 34-35.
- 75 Kelly Howe, written evidence.
- 76 SJA, written evidence.
- 77 Howard League Scotland, written evidence.
- 78 SLAB, written evidence.
- 79 Official Report, 6 October, col 45.
- 80 Bryan John Morgan, written evidence.
- 81 Op. cit
- 82 Faculty of Advocates, written evidence.
- 83 Terence Gallanagh, written evidence.
- 84 Fiona McKinnon, written evidence.
- 85 Official Report, 3 November, col 11.
- 86 Op. cit, col 15.
- 87 Op. cit

- 88 Official Report, 6 October, col 36.
- 89 Op. cit, cols 41-42.
- 90 Families Outside, written evidence.
- 91 APEX Scotland, written evidence.
- 92 Ibid.
- 93 HMICS, written evidence.
- 94 Faculty of Advocates, written evidence.
- 95 Social Work Scotland, written evidence.
- 96 Ibid.
- 97 SCTS, written evidence.
- 98 Official Report, 10 November, col 3.
- 99 Official Report, 3 November, col 8.
- 100 Official Report, 3 November, col 8.
- 101 Police Scotland/The SPA, written evidence.
- 102 Ibid.
- 103 Social Work Scotland, written evidence.
- 104 Ibid.
- 105 Victim Support Scotland, written evidence.
- 106 SCCJR, *A Defective System: Case Analysis of 15 years of FAI's After Deaths in Prison*, Betsy Barkas, Linda Allan, Stuart Allan, Sarah Armstrong and Deborah Kinnear. October 2021. Available [online](#).

